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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 1480

RICHARD A. KEEFE,
Petitioner,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

RESPONDENT'S BRIEF IN OPPOSITION.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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OPINION BELOW.

The opinion of the Appellate Court of Illinois, First District is reported at 116 Ill. App. 2d 38, 253 N. E. 2d 496 (1969) and is reproduced in the Petition for Writ of Certiorari as Appendix A. The Supreme Court of Illinois denied a Petition for Leave to Appeal from the decision of the Appellate Court of Illinois.

QUESTION PRESENTED FOR REVIEW.

Whether Keefe was guilty of contempt when, while acting as receiver, he acquired receivership properties, concealed from the court that appointed him his acquisition of

these properties through the use of undisclosed agents and the filing of false and misleading reports, and continued to act as receiver and receive fees as receiver of these properties.

STATEMENT.

The petitioner has failed to establish any reason why the instant case warrants review on certiorari. The judgment below was correct and was according to our system of jurisprudence. Furthermore, no decision was shown to be in conflict and no Federal question is involved.

The statement of facts supplied by the petitioner (Petn. pp. 3-4) omits all of the facts detrimental to his contentions. He displayed the same lack of candor when he failed to disclose these facts to the trial court which had appointed him receiver of the properties, and this was particularly true of the reports he filed under oath with the court in his fiduciary capacity of receiver. In order to present the essence of the concealments and manipulations which permeated the Keefe receivership some of the missing facts are set out in the following paragraphs.

In 1963 the Circuit Court of Cook County, Illinois, appointed the petitioner, Richard A. Keefe, as receiver of eleven properties in the City of Chicago owned by the Winkler brothers. The appointment was a phase of a program designed to correct building code violations existing in slum properties (R. C66).

During his tenure as receiver, Keefe purchased the mortgage interests in three of the receivership properties from the holder, Harry Eager (See the next following paragraph for the method by which Eager obtained these interests). The purchase from Eager was made by attorney Harold Ginsburg who advised Eager that Keefe was the purchaser. Among other things, it was agreed that on

the request of Ginsburg, or his "nominee" Eager's name was to be used as plaintiff in all foreclosure proceedings (Appellate Court opinion, Petn. App. 4-5).

Likewise, during his tenure as receiver, Keefe met with one of the Winkler brothers and with Winkler's attorney, and agreed to pay Winkler the sum of $35,000.00 if Winkler would abstain from attending mortgage foreclosure sales pertaining to three of the receivership properties. Winkler did not attend the sales and Eager (see preceding paragraph) was the successful bidder. Winkler received part of the promised payment from Keefe, and he testified that $20,000.00 was still due him (Appellate Court opinion, Petn. App. 5). The money paid by Keefe to Winkler was delivered to the latter's attorney in the form of cash enclosed in plain brown wrappers (R. 394, 659, 660).

The trial court was not made aware of the fact that the new owners of some of the properties and Keefe were one and the same person since the orders discharging Keefe as receiver for these properties specified that the receiver turn over the property to the "new owner" (R. C75, C76, C77, C78).

Not only did the reports under oath submitted by Keefe to the court fail to reveal his true interest in the properties, but, in addition, they actually requested fees for acting as receiver. For example, a property located at 935 N. Wells Street in Chicago was acquired by Keefe's undisclosed agent at a foreclosure sale on November 14, 1963, and Keefe continued as receiver for the property until March 19, 1964 (R. C77), and he then filed a final report with the court which recited *inter alia* (R. C. 90):

> "Your Receiver and his attorney are entitled to reasonable compensation for their services rendered herein and request the Court to fix their compensation."

Similar recitations were incorporated in other final reports submitted by Keefe as receiver on properties he had secretly acquired (R. C92, C93, C87). These deceptions achieved the result he planned since the orders discharging Keefe awarded him fees and receivership certificates for a period including the time he was the undisclosed owner of these properties (R. C75-C78).

The present action was initiated by filing a petition and an amended petition seeking disclosure (R. C3). It alleged that while acting as a receiver appointed by the court, Keefe secretly secured title to four parcels of receivership property (R. C193, 194). The petition prayed that Keefe make a full disclosure, that the judgments and orders discharging Keefe be vacated pursuant to Section 72 of the Civil Practice Act of Illinois, that Keefe be held in contempt subject to fines and penalties and that such other relief be granted as the Court found appropriate (R. C195). Keefe's motion to dismiss the petition was denied (R. C11, C12, C15). (Note: Section 72 of the Civil Practice Act of Illinois replaces, among other procedures, the former writ of *coram nobis,* and provides that a petition may be presented asking a court to vacate a judgment because of facts which if known to the court would have precluded the court from entering the judgment.)

The Court endeavored to obtain disclosures from Keefe relative to his interests in the properties (R. 302). Although Keefe refused to testify, he did ultimately file an Answer and three statements (R. C15, C26, C34). After many extensive hearings the Court ordered that a Petition for a Rule to show cause why Keefe should not be held in contempt of court should be prepared (R. C54). A Petition for a Rule was filed and Keefe filed an answer to the petition (R. C56, C98). Thereafter, the Court entered a judgment finding Keefe to be in contempt of court (R. C121-133). The Appellate Court affirmed the judgment and the Supreme Court of Illinois denied a Petition for Leave to Appeal.

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ARGUMENT.

The Decision Below Was Clearly Correct.

The issue here is uncomplicated. Was the receiver guilty of contempt of court when he secretly acquired receivership properties for himself and deliberately concealed the acquisitions from the court? The most adroit twisting of the facts or misapplication of decisions cannot transform the issue into one warranting review by this Court.

In the appeal before the Appellate Court of Illinois the petitioner contended that he could not be guilty of contempt because the "record is barren of any evidence, let alone proof beyond a reasonable doubt, that Keefe was actuated by any intent to assail the dignity and authority of the court, or that he wilfully and knowingly interfered with its procedure or the due administration of justice" (Appellant's Br. App. Ct. Ill. p. 22).

To the contrary the record is replete with evidence that Keefe wilfully and knowingly deliberately misled the court in an effort to conceal his wrongful acquisitions of property he administered as a court appointed receiver.

It is significant that the court found Keefe guilty of contempt based on the record. This record consisted of recorded deeds, mortgages and like documents, as well as testimony of various undisclosed agents and nominees used by Keefe in consummating his scheme. For example, Winkler, the fee owner of the properties, testified that Keefe agreed to "pay him off" if he agreed to absent himself from certain public sales. The outstanding fact in the record is that *Keefe himself did not testify.* He did file some statements after his motion to dismiss the action was denied.

The petitioner has endeavored to twist the facts and give this case the appearance of civil discovery being used against one later charged with a crime. This is not the circumstance in the instant case. Here a receiver violated his fiduciary duties and was accordingly found to be in contempt of the court that appointed him.

The effort by the petitioner to fit this case to *United States* v. *Parrott*, 248 F. Supp. 196 (D. C. D. C. 1965) (Petn. p. 6), is entirely misplaced. The *Parrott* case merely held that the federal government could not institute civil proceedings and use the available discovery provisions thereunder in order to obtain facts subsequently used in preparing a criminal charge. It further held that Federal courts have supervisory authority over the manner in which Federal agents exercise their powers. In *Parrott* a government attorney, whose identity was purposely concealed, attended Parrott's deposition in the civil case and used the information in preparing the criminal case, and this phase was considered improper by the District Court. None of the elements in *Parrott* are found in the case at bar. Here, the petitioner, Keefe, filed false reports as receiver and in a continuation of the same civil case the court found his actions to constitute a contempt.

The Illinois courts of review have defined contempt. Generally it is held to be "any act which is calculated to embarass, hinder or obstruct the court in the administration of justice . . ." *People* v. *Sherwin*, 334 Ill. 609, 615 (1929). In *People ex rel. Chicago Bar Ass'n.* v. *Barasch*, 21 Ill. 2d 407, 409 (1961), the Supreme Court of Illinois declared that strictly speaking contempt was neither civil nor criminal but "may best be characterized as *sui generis* and may partake of the characteristics of both." The Court also pointed out (p. 410) that even where the proceeding is in the nature of criminal contempt the respondent is not entitled to the protection afforded one accused of a crime.

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Also see, *United States* v. *Kroger Grocery & Baking Co.*, 163 F. 2d 168, 174 (7th Cir. 1947).

The petitioner quotes a small portion of the decision by the Appellate Court of Illinois and expresses a discontent with that language as a reason for sustaining the trial court (Petn. p. 7). Petitioner should have also quoted the portion of the decision immediately preceding that which he set out, as follows (Petn. App. 8):

> "It is apparent from this record that the respondent [Keefe] was thoroughly familiar with the real estate field in which he was employed and that he attempted to take advantage of his knowledge for a forbidden purpose. For example, it is a matter of common knowledge that trustees holding legal title under a land trust will not disclose the identity of the beneficiary of such a trust. In the case at bar, the legal title to all four properties was held in separate land trusts. The City could not have ascertained the identity of the beneficiary when it was discovered, through the examination of public records, that the properties were held in trust. Furthermore, the public records applicable to these four properties did not disclose that Keefe, the respondent, was the purchaser at the respective foreclosure sales since he was clever and careful enough to use nominees in a successful effort to conceal from the public, the City, and the court his self-dealing in receivership property. . . ."

The true posture of the petitioner is revealed by the contents of his Petition for Writ of Certiorari—he plotted to use his fiduciary position as receiver to acquire real estate through a series of nefarious, secret maneuvers and then to succeed in retaining these titles by raising a cry that his constitutional freedoms have been trampled upon. Clearly, this is a far cry from the spirit and intent of the Constitution, even if *arguendo* his contention were well-founded.

Petitioner's reference to *Bloom* v. *Illinois*, 391 U. S. 194 (1968), is likewise misplaced. That decision holds that Bloom was entitled to be tried by a jury as he had requested prior to trial. In the case at bar no jury was requested.

The petitioner cites the somewhat time-honored case of *United States* v. *Saline Bank of Virginia*, 26 U. S. 100 (1828) (Petn. p. 6). But that decision merely held that the defendants (bank officers) could not be bound to make disclosures during discovery procedures which would expose them to penalties. The record here demonstrates that no discovery procedures were in fact employed to effectuate such a result, and, in addition, that Keefe was in a position of fiduciary-officer to the court not a stranger as were the petitioners in the decisions cited by Keefe.

The petitioner has failed to establish that there is any reason why this case should be reviewed by this Court. The judgment below was manifestly correct, and served to preserve the integrity and respect due the court. Furthermore, none of the cases cited by the petitioner are in conflict with this judgment, and the petitioner has failed to show that any substantial question of Federal law is present.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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